Article 2.

Powers and Duties of Department and Board of Transportation.

§ 136-17: Repealed by Session Laws 1973, c. 507, s. 3.

§ 136-17.1. Repealed by Session Laws 1977, c. 464, s. 13.

§ 136-17.2. Members of the Board of Transportation represent entire State.

The chairman and members of the Board of Transportation shall represent the entire State in transportation matters and not represent any particular person, persons, or area. The Board shall, from time to time, provide that one or more of its members or representatives shall publicly hear any person or persons concerning transportation matters in each of said geographic areas of the State. (1973, c. 507, s. 3; 1977, c. 464, s. 7.1; 1987, c. 783, s. 3; 1993, c. 483, s. 3.)

§ 136-17.2A: Repealed by Session Laws 2013-183, s. 4.3, effective July 1, 2013.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

(1) The authority and general supervision over all matters relating to the construction, maintenance, and design of State transportation projects, letting of contracts therefor, and the selection of materials to be used in the construction of State transportation projects under the authority of this Chapter.

(2) Related to right-of-way:

a. To take over and assume exclusive control for the benefit of the State of any existing county or township roads.

b. To locate and acquire rights-of-way for any new roads that may be necessary for a State highway system.

c. Subject to the provisions of G.S. 136-19.5(a) and (b), to use existing rights-of-way, or locate and acquire such additional rights-of-way, as may be necessary for the present or future relocation or initial location, above or below ground, of:

1. Telephone, telegraph, distributed antenna systems (DAS), broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof; and

2. Nonutility owned or operated communications or data transmission infrastructure.

The Department retains full power to widen, relocate, change or alter the grade or location thereof, or alter the location or configuration of such lines or systems above or below ground. No agreement for use of Department right-of-way under this sub-subdivision shall abrogate the

Department's ownership and control of the right-of-way. The Department is authorized to adopt policies and rules necessary to implement the provisions of this sub-subdivision.

d. To change or relocate any existing roads that the Department of Transportation may now own or may acquire.

e. To acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State transportation system and adjacent utility rights-of-way.

f. Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable.

g. Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except for any of the following:

a. Materials displayed in welcome centers in accordance with G.S. 136-89.56.

b. Vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed.

c. Activities permitted by a local government pursuant to an ordinance meeting the requirements of G.S. 136-27.4.

Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor, and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the

Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be

built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the formula for the distribution of funds established by G.S. 136-189.11. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter

159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt-financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the

approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. Such facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states

providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary local government, property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Local government, property owner and highway user participation can be in the form of materials,

money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision applies to improvements that are not located on the school property. The Department shall have the power to grant final approval of any project design under this subdivision. To facilitate completion of the evaluation and recommendations within the required 60 days, in lieu of the evaluation by the Department, schools may engage an independent traffic engineer prequalified by the Department. The resulting evaluation and recommendations from the independent traffic engineer shall also fulfill any similar requirements imposed by a unit of local government. This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department or the independent traffic engineer, except those highway improvements that are required for safe ingress and egress to the State highway system, pursuant to subdivision (29) of this section, and that are physically connected to a driveway on the school property. The total cost of any improvements to the State highway system provided by a school pursuant to this subdivision, including those improvements pursuant to subdivision (29) of this section, shall be reimbursed by the Department. Any agreement between a school and the Department to make improvements to the State highway system shall not include a requirement for acquisition of right-of-way by the school, unless the school is owned by an entity that has eminent domain power. Nothing in this subdivision shall preclude the Department from entering into an

agreement with the school whereby the school installs the agreed upon improvements and the Department provides full reimbursement for the associated costs incurred by the school, including design fees and any costs of right-of-way or easements. The term "school," as used in this subdivision, means any facility engaged in the educational instruction of children in any grade or combination of grades from kindergarten through the twelfth grade at which attendance satisfies the compulsory attendance law and includes charter schools authorized under G.S. 115C-218.5. The term "improvements," as used in this subdivision, refers to all facilities within the right-of-way required to be installed to satisfy the road cross-section requirements depicted upon the approved plans. These facilities shall include roadway construction, including pavement installation and medians; ditches and shoulders; storm drainage pipes, culverts, and related appurtenances; and, where required, curb and gutter; signals, including pedestrian safety signals; street lights; sidewalks; and design fees. Improvements shall not include any costs for public utilities.

(29b) The Department of Transportation shall consider exceptions to the sight distance requirement for driveway locations in instances where the curves of the road are close and frequent. Exceptions shall be granted in instances where sufficient sight distance can be provided or established through other means such as advisory speed signs, convex mirrors, and advanced warning signs. When appropriate, the Department shall consider lowering the speed limit on the relevant portion of the road. The Department may require a driveway permit applicant to cover the cost of installing the appropriate signage around the driveway, including speed limit reduction and driveway warning signs, and may also require the applicant to install and maintain convex or other mirrors to increase the safety around the driveway location.

This subdivision applies only to sections of roadway where the minimum sight distance as defined in the published "Policy on Street and Driveway Access to North Carolina Highways" is not available for a proposed driveway.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,

b. Have been designated or would be so designated solely to preserve system continuity, and

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter.

(36) The Department shall have the following powers related to fixed guideway public transportation system safety:

a. To oversee the safety of fixed guideway public transportation systems in the State not regulated by the Federal Railroad Administration, pursuant to 49 U.S.C. § 5329 and 49 U.S.C. § 5330 and any reauthorizations of or amendments to those sections. The Department shall adopt rules in conformance with 49 U.S.C. § 5329 and 49 U.S.C.

§ 5330 concerning its oversight of the safety of fixed guideway public transportation systems.

b. The Department shall examine and inspect the condition of each rail fixed guideway public transportation system and its equipment and facilities for the purpose of ensuring the safety and convenience of the public and the rail fixed guideway public transportation system's employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the rail fixed guideway public transportation system and require the rail fixed guideway public transportation system to repair the equipment or facilities.

c. The Department may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all rail fixed guideway public transportation systems and may investigate the cause of any rail fixed guideway public transportation system accident. In order to facilitate this program, any rail fixed guideway public transportation system involved in an accident meeting the reporting thresholds defined by the Department shall report the accident to the Department.

d. The Department shall review, approve, oversee, and enforce each rail fixed guideway public transportation system's implementation of the public transportation system safety plan required pursuant to 49 U.S.C. § 5329(d).

e. The Department shall audit, at least once triennially, each rail fixed guideway public transportation system's compliance with the public transportation agency safety plan required pursuant to 49 U.S.C. § 5329(d).

f. The Department shall provide, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems overseen by the Department to the Federal Transit Administration, the Governor, and the Board of Directors, or equivalent entity, of any rail fixed guideway public transportation system the Department oversees.

g. The Department shall not receive funding for the activities authorized by sub-subdivisions a. through f. of this subdivision from any rail fixed guideway public transportation systems subject to the Department's authority pursuant to the provisions of sub-subdivisions a. through f. of this subdivision.

(37) To permit use of and encroachment upon the right-of-way of a State highway or road for the purpose of construction and maintenance of a bridge owned by a private or public entity, if the bridge shall not unreasonably interfere with or obstruct the public use of the right-of-way. Any agreement for an encroachment authorized by this subdivision shall be approved by the Board of Transportation, upon a finding that the encroachment is necessary and appropriate, in the sole discretion of the Board. Locations, plans, and specifications for any pedestrian or vehicular bridge authorized by the Board for construction pursuant to this subdivision shall be approved by the Department of Transportation. For any bridge subject to this subdivision, the

Department shall retain the right to reject any plans, specifications, or materials used or proposed to be used, inspect and approve all materials to be used, inspect the construction, maintenance, or repair, and require the replacement, reconstruction, repair, or demolition of any partially or wholly completed bridge that, in the sole discretion of the Department, is unsafe or substandard in design or construction. An encroachment agreement authorized by this subdivision may include a requirement to purchase and maintain liability insurance in an amount determined by the Department of Transportation. The Department shall ensure that any bridge constructed pursuant to this subdivision is regularly inspected for safety. The owner shall have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and shall provide the Department copies of the Bridge Inspection Reports where they shall be kept on file. Any bridge authorized and constructed pursuant to this subdivision shall be subject to all other rules and conditions of the Department of Transportation for encroachments.

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purposes of advancing right-of-way acquisition or the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within the period of the existing Transportation Improvement Program.

(39) To enter into partnership agreements with private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. No contract for transportation infrastructure subject to such an agreement that commits the Department to make nonretainage payments for undisputed capital costs of a completed transportation infrastructure to be made later than 18 months after final acceptance by the Department of such transportation infrastructure shall be executed without approval of the Local Government Commission. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

(39a) a. The Department of Transportation or Turnpike Authority, as applicable, may enter into up to three agreements with a private entity as provided under subdivision (39) of this section for which the provisions of this section apply.

b. A private entity or its contractors must provide performance and payment security in the form and in the amount determined by the Department of Transportation. The form of the performance and payment security may consist of bonds, letters of credit, parent guaranties, or other instruments acceptable to the Department of Transportation.

c. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into under this subdivision may allow the private entity to assign, transfer, sell, hypothecate, and otherwise convey some or all of its right, title, and interest in and to such agreement, and any rights and remedies thereunder, to a lender, bondholder, or any other party. However, in no event shall any such assignment create additional debt or debt-like obligations of the State of North Carolina, the Department, or any other agency, authority, commission, or similar subdivision of the State to any lender, bondholder, entity purchasing a participation in the right to receive the payment, trustee, trust, or any other party providing financing or funding of projects described in this section. The foregoing shall not preclude the Department from making any payments due and owing pursuant to an agreement entered into under this section.

d. Article 6H of Chapter 136 of the General Statutes shall apply to the Department of Transportation and to projects undertaken by the Department of Transportation under subdivision (39) of this section. The Department may assign its authority under that Article to fix, revise, charge, retain, enforce, and collect tolls and fees to the private entity.

e. Any contract under this subdivision or under Article 6H of this Chapter for the development, construction, maintenance, or operation of a project shall provide for revenue sharing, if applicable, between the private party and the Department, and revenues derived from such project may be used as set forth in G.S. 136-89.188(a), notwithstanding the provisions of G.S. 136-89.188(d). Excess toll revenues from a Turnpike project shall be used for the funding or financing of transportation projects within the corridor where the Turnpike Project is located. For purposes of this subdivision, the term "excess toll revenues" means those toll revenues derived from a Turnpike Project that are not otherwise used or allocated to the Authority or a private entity pursuant to this subdivision, notwithstanding the provisions of G.S. 136-89.188(d). For purposes of this subdivision, the term "corridor" means (i) the right-of-way limits of the Turnpike Project and any facilities related to the Turnpike Project or any facility or improvement necessary for the use, design, construction, operation, maintenance, repair, rehabilitation, reconstruction, or financing of a Turnpike Project; (ii) the right-of-way limits of any subsequent

improvements, additions, or extension to the Turnpike Project and facilities related to the Turnpike projects, including any improvements necessary for the use, design, construction, operation, maintenance, repair, rehabilitation, reconstruction, or financing of those subsequent improvements, additions, or extensions to the Turnpike Project; and (iii) roads used for ingress or egress to the toll facility or roads that intersect with the toll facility, whether by ramps or separated grade facility, and located within one mile in any direction.

f. Agreements entered into under this subdivision shall comply with the following additional provisions:

1. The Department shall solicit proposals for agreements.
2. Agreement shall be limited to no more than 50 years from the date of the beginning of operations on the toll facility.
3. Notwithstanding the provisions of G.S. 136-89.183(a)(5), all initial tolls or fees to be charged by a private entity shall be reviewed by the Turnpike Authority Board. Prior to setting toll rates, either a set rate or a minimum and maximum rate set by the private entity, the private entity shall hold a public hearing on the toll rates, including an explanation of the toll setting methodology, in accordance with guidelines for the hearing developed by the Department. After tolls go into effect, the private entity shall report to the Turnpike Authority Board 30 days prior to any increase in toll rates or change in the toll setting methodology by the private entity from the previous toll rates or toll setting methodology last reported to the Turnpike Authority Board.
4. Financial advisors and attorneys retained by the Department on contract to work on projects pursuant to this subsection shall be subject to State law governing conflicts of interest.
5. 60 days prior to the signing of a concession agreement subject to this subdivision, the Department shall report to the Joint Legislative Transportation Oversight Committee on the following for the presumptive concessionaire:
    I. Project description.
    II. Number of years that tolls will be in place.
    III. Name and location of firms and parent companies, if applicable, including firm responsibility and stake, and assessment of audited financial statements.
    IV. Analysis of firm selection criteria.
    V. Name of any firm or individual under contract to provide counsel or financial analysis to the Department or Authority. The Department shall disclose payments to these contractors related to completing the agreement under this subdivision.
    VI. Demonstrated ability of the project team to deliver the project, by evidence of the project team's prior

experience in delivering a project on schedule and budget, and disclosure of any unfavorable outcomes on prior projects.

VII. Detailed description of method of finance, including sources of funds, State contribution amounts, including schedule of availability payments and terms of debt payments.

VIII. Information on assignment of risk shared or assigned to State and private partner.

IX. Information on the feasibility of finance as obtained in traffic and revenue studies.

6. The Turnpike Authority annual report under G.S. 136-89.193 shall include reporting on all revenue collections associated with projects subject to this subdivision under the Turnpike Authority.

7. The Department shall develop standards for entering into comprehensive agreements with private entities under the authority of this subdivision and report those standards to the Joint Legislative Transportation Oversight Committee on or before October 1, 2013.

(40) To expand public access to coastal waters in its road project planning and construction programs. The Department shall work with the Wildlife Resources Commission, other State agencies, and other government entities to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by the Department. The Department shall adhere to all applicable design standards and guidelines in implementation of this enhanced access.

(41) The Department shall, prior to the beginning of construction, determine whether all sidewalks and other facilities primarily intended for the use of pedestrians and bicycles that are to be constructed within the right-of-way of a public street or highway that is a part of the State highway system or an urban highway system must be constructed of permeable pavement. "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

(42) The Department shall develop and utilize a process for selection of transportation projects that is based on professional standards in order to most efficiently use limited resources to benefit all citizens of the State. The strategic prioritization process should be a systematic, data-driven process that includes a combination of quantitative data, qualitative input, and multimodal characteristics, and should include local input. The Department shall develop a process for standardizing or approving local methodology used in Metropolitan Planning Organization and Rural Transportation Planning Organization prioritization.

(43) For the purposes of financing an agreement under subdivision (39a) of this section, the Department of Transportation may act as a conduit issuer for private activity bonds to the extent the bonds do not constitute a debt obligation of the State. The issuance of private activity bonds under this subdivision and any related actions shall be governed by The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, with G.S. 159-88 satisfied by adherence to the requirements of subdivision (39a) of this section.

(44) The Department is authorized to contract for sponsorship arrangements for Department operations and may solicit contracts for such arrangements pursuant to Article 2 of this Chapter. All amounts collected and all savings realized as a result of these sponsorship arrangements shall be used by the Department toward funding of maintenance activities.

(44a) Where the Department owns or leases the passenger rail facility, owns or leases the rail equipment, or holds leasehold or license rights for the purpose of operating passenger stations, the Department may operate or contract for the following receipt-generating activities and use the proceeds to fund passenger rail operations:

a. Where the Department owns the passenger rail facility or owns or leases the rail equipment, operation of concessions on State-funded passenger trains and at passenger rail facilities to provide to passengers food, drink, and other refreshments, personal comfort items, Internet access, and souvenirs publicizing the passenger rail system.

b. Where the Department holds leasehold or license rights for the purpose of operating passenger stations, operation of concessions at rail passenger facilities to provide food, drink, and other refreshments, personal comfort items, Internet access, and souvenirs publicizing the passenger rail system, in accordance with the terms of the leasehold or license.

c. Advertising on or within the Department's passenger rail equipment or facility, including display advertising and advertising delivered to passengers through the use of video monitors, public address systems installed in passenger areas, and other electronic media.

d. The sale of naming rights to Department-owned passenger rail equipment or facilities.

(45) The Department shall not transfer ownership of a State-owned concrete arch bridge to any public, private, or nonprofit entity as part of any bridge relocation or reuse program project unless the entity assumes all liability associated with the bridge and posts a bond or other financial assurance acceptable to the Department to cover the present value of future maintenance costs, as well as any right-of-way or other additional costs if the bridge transfer would require the Department to change the planned route of any replacement structure. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129;

1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a); 1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102; 2001-424, s. 27.27; 2003-184, s. 1; 2003-267, s. 1; 2004-168, s. 1; 2005-403, s. 2; 2006-230, s. 1(a); 2007-428, s. 1; 2007-439, s. 1; 2007-485, s. 3.1; 2008-164, s. 1; 2008-180, ss. 2, 8; 2009-266, s. 6; 2009-451, s. 25.6(a); 2010-97, s. 14; 2010-165, ss. 4, 4(a), 5-8; 2012-84, s. 2; 2012-184, s. 1; 2013-137, ss. 1, 2; 2013-183, ss. 4.2, 5.2; 2013-266, s. 1; 2014-58, ss. 9, 13; 2014-100, s. 34.27; 2014-115, s. 56.2; 2015-241, s. 29.22(a); 2016-90, s. 2(a); 2017-57, s. 34.6A(a); 2017-159, s. 3(a); 2017-197, s. 7.5.)

§ 136-18.01. Consultation required for welcome and visitor centers.

The Department of Commerce and the Department of Transportation shall consult with the chairs of the Joint Legislative Transportation Oversight Committee, the chairs of the Senate Appropriations Committee on Department of Transportation, the chairs of the House of Representatives Appropriations Committee on Transportation, the chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources before beginning the design or construction of any new welcome center or visitor center buildings. (2007-356, s. 1; 2017-57, s. 14.1(w).)

§ 136-18.02. Operation of electric vehicle charging stations at rest stops; report.

(a) The Department of Transportation may operate an electric vehicle charging station at State-owned rest stops along the highways only if all of the following conditions are met:

(1) The electric vehicle charging station is accessible by the public.

(2) The Department has developed a mechanism to charge the user of the electric vehicle charging station a fee in order to recover the cost of electricity consumed, the cost of processing the user fee, and a proportionate cost of the operation and maintenance of the electric vehicle charging station.

(b) If the cost of the electricity consumed at the electric vehicle charging stations cannot be calculated as provided by subsection (a) of this section, the Department shall develop an alternative mechanism, other than electricity metering, to recover the cost of the electricity consumed at the vehicle charging station.

(c) The Department may consult with other State agencies and industry representatives in order to develop the mechanisms for cost recovery required pursuant to subsection (a) of this section.

(d) Beginning January 1, 2014, and annually thereafter, the Department of Transportation shall report to the Joint Legislative Commission on Energy Policy, the Joint Legislative Transportation Oversight Committee, the House Appropriations Subcommittee on Transportation, and the Senate Appropriations Subcommittee on Department of Transportation on the implementation of this section. (2012-186, s. 2.)

§ 136-18.03. Outside counsel.

(a) Intent. – It is the intent of the General Assembly that the Department of Transportation exercise the authority granted by this section to maximize operational and project delivery benefits attributed to the avoidance or successful defense of litigation.

(b) Authorization. – The Department of Transportation may engage the services of private counsel with the pertinent expertise to provide legal services related to any project undertaken by the Department. The Department shall supervise and manage the private counsel engaged under this section and, excluding legal services related to workers' compensation claims brought by Department employees, shall not be required to obtain written permission or approval from the Attorney General under G.S. 114-2.3. G.S. 147-17(c1) and G.S. 114-2.3(d) do not apply to this section.

(c) Performance Metrics. – The Department shall develop performance metrics to evaluate its utilization of in-house counsel and private counsel, to include the following:

(1) A summary of new matters opened by legal area.
(2) Case cycle times.
(3) Resolution of cases.
(4) A comparison of in-house costs to billable rates for private counsel.
(5) The process for procurement for legal services.

(d) Report. – The Department shall provide a semiannual report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Justice and Public Safety Oversight Committee on the performance metrics set forth in subsection (c) of this section. (2015-241, s. 29.8(d); 2017-57, s. 6.7(c).)

§ 136-18.04. Product Evaluation Program.

The Product Evaluation Program, or any successor program operated by the Department of Transportation to review and approve or disapprove new and innovative technologies and products for use by the Department, shall complete its evaluation of a technology or product within one year from the date that the technology or product was submitted for evaluation. Nothing in this section shall be construed as requiring the Product Evaluation Program or any successor program to review all technologies and products submitted to the Product Evaluation Program or any successor program. (2015-241, s. 29.11(c).)

§ 136-18.05. Establishment of "DOT Report" Program.

(a) Intent. – It is the intent of the General Assembly that North Carolina's reputation as the "Good Roads State" is restored, which requires a partnership between the Governor, the Department of Transportation, the General Assembly, and all North Carolina citizens.

Further, the General Assembly finds that improving the condition of North Carolina's roads requires increased oversight, accountability, innovation, and efficiency. It is the belief of the General Assembly that, through increased transparency and responsiveness to the public, the condition of the roads in this State will be the best in the nation within 10 years.

(b) Establishment and Components. – To achieve the intent set forth in subsection (a) of this section, the Department shall establish and implement the "DOT Report" Program (Program). The Program shall include the following components:

(1) Responsiveness. – The Department shall structure the Program to gather citizen input and shall commit to quickly addressing structural problems and other road hazards on State-maintained roads. Citizens may report potholes, drainage issues, culvert blockages, guardrail repairs, damaged or missing signs, malfunctioning traffic lights, highway debris, or shoulder damage to the Department of Transportation by calling a toll-free telephone number designated by the Department or submitting an online work request through a Web site link designated by the Department. Beginning January 1, 2016, upon receiving a citizen report in accordance with this subdivision, the Department shall either address the reported problem or identify a solution to the reported problem. Excluding potholes, which shall be repaired within two business days of the date the report is received, the Department of Transportation shall properly address (i) safety-related citizen reports no later than 10 business days after the date the report is received and (ii) non-safety-related citizen reports no later than 15 business days after the date the report is received. The Department shall determine, in its discretion, whether a citizen report is safety-related or non-safety-related. The Department shall transmit information received about potholes or other problems on roads not maintained by the State to the appropriate locality within two business days of receiving the citizen report. The Department shall post a monthly report to the Department's performance dashboard Web site on the number of citizen reports received under this subdivision for the month immediately preceding the monthly report, the number of citizen reports fully addressed within the time frames set forth in this subdivision for the month immediately preceding the monthly report, the number of citizen reports addressed outside of the time frames set forth in this subdivision for the month immediately preceding the monthly report, and the number of citizen reports not fully addressed for the month immediately preceding the report.

(1a) Efficiency. – The Department shall adopt procedures in all stages of the construction process to streamline project delivery, including consolidating environmental review processes, expediting multiagency reviews, accelerating right-of-way acquisitions, and pursuing design build and other processes to collapse project stages. By December 1, 2015, the Department shall establish a baseline unit pricing structure for transportation goods used in highway maintenance and construction projects and set annual targets for three years based on its unit pricing. In forming the baseline unit prices and future targets, the Department shall collect data from each Highway Division on its expenditures on transportation goods during the 2015-2016 fiscal year. Beginning January 1, 2016, no Highway Division shall exceed a ten percent

(10%) variance over a baseline unit price set for that year in accordance with this subdivision. The Department of Transportation shall institute annual tracking to monitor pricing variances. The ten percent (10%) maximum variance set under this subdivision is intended to account for regional differences requiring varying product mixes. If a Highway Division exceeds the unit pricing threshold, the Department shall submit a report to the Joint Legislative Transportation Oversight Committee, the Fiscal Research Division of the General Assembly, the chairs of the House of Representatives Appropriations Committee on Transportation, and the chairs of the Senate Appropriations Committee on the Department of Transportation no later than the fifteenth day of February following the end of the calendar year on why the variance occurred and what steps are being taken to bring the Highway Division back into compliance. In order to drive savings, unit pricing may be reduced annually as efficiencies are achieved.

(2) Performance. – Beginning December 1, 2015, the Secretary of the Department of Transportation shall conduct an annual job satisfaction survey of all Department personnel that shall address relationships among all levels of leadership, work environment, issues impacting job performance, and leadership performance in creating the dynamic work environment necessary to meet new performance outcomes. In addition, the Department shall conduct an annual survey of North Carolina citizens to measure the level of citizen satisfaction with the condition of the roads and highways of this State. Within 30 days of compiling the information received from surveys conducted in accordance with this subdivision, the results of these surveys shall be reported to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

(c) Quarterly Cost Escalation Report. – Within 30 days of the end of each quarter, the Department of Transportation shall submit to the chairs of the Joint Legislative Transportation Oversight Committee and to the Fiscal Research Division of the General Assembly a quarterly report containing summaries by month of a report for resurfacing projects and a report for contracts let centrally and by the highway divisions. Both reports shall contain all of the following information itemized by highway division:

(1) Total number of projects.
(2) Number of awarded projects.
(3) Number of bidders.
(4) Average number of bidders per project.
(5) Number of single bids.
(6) Number of contracts not awarded.
(7) Total cost estimate for projects.
(8) Total low bid amount.
(9) Percentage above or below estimate. (2015-241, s. 29.14(a); 2017-57, s. 35.16(a); 2018-5, s. 34.10(a); 2018-74, s. 2(a).)

§ 136-18.1. Repealed by Session Laws 1999-29, s. 1.

§ 136-18.2. Seed planted by Department of Transportation to be approved by Department of Agriculture and Consumer Services.

The Department of Transportation shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the Department of Agriculture and Consumer Services as provided for in the rules and regulations of the Department of Agriculture and Consumer Services for such seed. (1957, c. 1002; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1997-261, ss. 88, 109.)

§ 136-18.3. Location of garbage collection containers by counties and municipalities.

(a) The Department of Transportation is authorized to issue permits to counties and municipalities for the location of containers on rights-of-way of state-maintained highways for the collection of garbage. Such containers may be located on highway rights-of-way only when authorized in writing by the Chief Engineer in accordance with rules and regulations promulgated by the Department of Transportation. Such rules and regulations shall take into consideration the safety of travelers on the highway and the elimination of unsightly conditions and health hazards. Such containers shall not be located on fully controlled-access highways.

(b) The provisions of G.S. 14-399, which make it a misdemeanor to place garbage on highway rights-of-way, shall not apply to persons placing garbage in containers in accordance with rules and regulations promulgated by the Department of Transportation.

(c) The written authority granted by the Department of Transportation shall be no guarantee that the State system highway rights-of-way on which the containers are authorized to be located is owned by the Department of Transportation, and the issuance of such written authority shall be granted only when the county or municipality certifies that written permission to locate the refuse container has been obtained from the owner of the underlying fee if the owner can be determined and located.

(d) Whenever any municipality or county fails to comply with the rules and regulations promulgated by the Department of Transportation or whenever they fail or refuse to comply with any order of the Department of Transportation for the removal or change in the location of a container, then the permit of such county or municipality shall be revoked. The location of such garbage containers on highway rights-of-way after such order for removal or change is unauthorized and illegal; the Department of Transportation shall have the authority to remove such unauthorized or illegal containers and charge the expense of such removal to the county or municipality failing to comply with the order of the Department of Transportation. (1973, c. 1381; 1977, c. 464, s. 7.1; 2012-85, s. 5.)

§ 136-18.3A. Wireless communications infrastructure.

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, or under the rights-of-way of State-maintained highways. The permits and included

requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) The Department of Transportation shall take action to approve or deny a permit application for collocation of a small wireless facility under this section within a reasonable period of time of receiving the application from a wireless provider.

(d) The collocation of small wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of small wireless facilities along, across, upon, or under the rights-of-way of State-maintained highways shall be subject to all of the following requirements:

(1) The structures and facilities shall not obstruct or hinder the usual travel or public safety on any rights-of-way of State-maintained highways or obstruct the legal use of such rights-of-way of State-maintained highways by other utilities.

(2) Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, other than a utility pole supporting only wireless facilities, in place as of July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(3) Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole, other than a utility pole supporting only wireless facilities, or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under subdivision (2) of this section. (2017-159, s. 3(b).)

§ 136-18.4. Provision and marking of "pull-off" areas.

The Department of Transportation is hereby authorized and directed (i) to provide as needed within its right-of-way, adjacent to long sections of two-lane primary highway having a steep uphill grade or numerous curves, areas on which buses, trucks and other slow-moving vehicles can pull over so that faster moving traffic may proceed unimpeded and (ii) to erect appropriate and adequate signs along such sections of highway and at the pull-off areas. A driver of a truck, bus, or other slow-moving vehicle who fails to use an area so provided and thereby impedes faster moving traffic following his vehicle shall be guilty of a Class 3 misdemeanor. (1975, c. 704; 1977, c. 464, s. 7.1; 1993, c. 539, s. 978; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 136-18.5. Wesley D. Webster Highway.

State Highway 704 shall be known as the "Wesley D. Webster Highway". (1983 (Reg. Sess., 1984), c. 974.)

§ 136-18.5A. Purple Heart Memorial Highway.

Interstate Highway 95 in North Carolina is designated as the "Purple Heart Memorial Highway" to pay tribute to the many North Carolinians who have been awarded the Purple Heart medal after being wounded or killed in action against the enemy. (2002-86, s. 2(a).)

§ 136-18.5B. Dale Earnhardt Highway.

The Board of Transportation shall designate State Highway 136 in Iredell and Cabarrus counties as State Highway 3, which shall be known as the "Dale Earnhardt Highway". (2002-170, s. 4.)

§ 136-18.5C. The U.S. Marine Corps Highway: Home of Carolina-Based Marines since 1941.

U.S. Highway 17 running between the Town of Holly Ridge and the Town of Edenton, and the portion of U.S. Highway 70 running between the intersection of U.S. Highway 70 and N.C. Highway 101 near Cherry Point Marine Corps Air Station and the intersection of U.S. Highway 70 and U.S. Highway 17 is designated as "The U.S. Marine Corps Highway: Home of Carolina-Based Marines since 1941" in light of the historical contributions of the United States Marine Corps. (2009-198, s. 1.)

§ 136-18.6. Cutting down trees.

Except in the process of an authorized construction, maintenance or safety project, the Department shall not cut down trees unless:

(1) The trees pose a potential danger to persons or property; or

(2) The cutting down of the trees is approved by the appropriate District Engineer. (1989, c. 63.)

§ 136-18.7. Fees.

The fee for a selective vegetation removal permit issued pursuant to G.S. 136-18(5), (7), and (9) is two hundred dollars ($200.00). (1999-404, s. 5.)

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

(a) The Department of Transportation is vested with the power to acquire either in the nature of an appropriate easement or in fee simple such rights-of-way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for transportation infrastructure construction, including road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter set out. If the Department of Transportation acquires by purchase, donation, or condemnation part of a tract of land in fee simple for highway right-of-way as authorized by this section and the Department of Transportation later determines that the property acquired for transportation infrastructure, including highway right-of-way, or a part of that property, is no longer needed for infrastructure right-of-way, then the Department shall give first consideration to any offer to purchase the property made by the former owner. The Department may refuse any offer that is less than the current market value of the property, as determined by the Department. Unless the Department acquired an entire lot, block, or tract of land belonging to the former owner, the former owner must own the remainder of the lot, block, or tract of land from which the property was acquired to receive first consideration by the Department of their offer to purchase the property.

(b) Notwithstanding the provisions of subsection (a), if the Department acquires the property by condemnation and determines that the property or a part of that property is no longer needed for highway right-of-way or other transportation projects, the Department of

Transportation may reconvey the property to the former owner upon payment by the former owner of the full price paid to the owner when the property was taken, the cost of any improvements, together with interest at the legal rate to the date when the decision was made to offer the return of the property. Unless the Department acquired an entire lot, block, or tract of land belonging to the former owner, the former owner must own the remainder of the lot, block, or tract of land from which the property was acquired to purchase the property pursuant to this subsection.

(c) The requirements of this section for reconveying property to the former owner, regardless of whether such property was acquired by purchase, donation, or condemnation, shall not apply to property acquired outside the right-of-way as an "uneconomic remnant" or "residue".

(d) The Department of Transportation is also vested with the power to acquire such additional land alongside of the rights-of-way for transportation projects, including roads as in its opinion may be necessary and proper for the protection of the transportation projects, including roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Department of Transportation may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right-of-way purposes.

(e) Notwithstanding any other provisions of law or eminent domain powers of utility companies, utility membership corporations, municipalities, counties, entities created by political subdivisions, or any combination thereof, and in order to prevent undue delay of highway projects because of utility conflicts, the Department of Transportation may condemn or acquire property in fee or appropriate easements necessary to provide transportation project rights-of-way for the relocation of utilities when required in the construction, reconstruction, or rehabilitation of a State transportation project. The Department of Transportation shall also have the authority, subject to the provisions of G.S. 136-19.5(a) and (b), to, in its discretion, acquire rights-of-way necessary for the present or future placement of utilities as described in G.S. 136-18(2).

(f) Whenever the Department of Transportation and the owner or owners of the lands, materials, and timber required by the Department of Transportation to carry on the work as herein provided for, are unable to agree as to the price thereof, the Department of Transportation is hereby vested with the power to condemn the lands, materials, and timber and in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used by it exclusively.

(g) The Department of Transportation shall have the same authority, under the same provisions of law provided for construction of State transportation projects, for acquirement of all rights-of-way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125 acres per mile of said parkways, including roadway and recreational, and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or appropriated may, at the option of the Department of Transportation, be a fee-simple title. The said Department of Transportation is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the Department of Transportation, payable out of the State Highway Fund. Any conveyance to the United States Department of Interior of land acquired as provided by this section shall contain a provision whereby the State of North Carolina shall retain concurrent jurisdiction over the areas conveyed. The Governor is further

authorized to grant concurrent jurisdiction to lands already conveyed to the United States Department of Interior for parkways and entrances to parkways.

(h) The action of the Department of Transportation heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Department of Transportation in furtherance of the public interest.

(i) When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the Department of Transportation that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the Department of Transportation for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights-of-way on other property by the Department of Transportation. (1921, c. 2, s. 22; 1923, c. 160, s. 6; C.S., s. 3846(bb); 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; 1949, c. 1115; 1953, c. 217; 1957, c. 65, s. 11; 1959, c. 1025, s. 1; cc. 1127, 1128; 1963, c. 638; 1971, c. 1105; 1973, c. 507, ss. 5, 11; 1977, c. 464, s. 7.1; 1989 (Reg. Sess., 1990), c. 962, s. 2; 1991 (Reg. Sess., 1992), c. 979, s. 1; 2009-266, s. 7.)

§ 136-19.1. Repealed by Session Laws 1977, c. 338, s. 1.

§ 136-19.2. Repealed by Session Laws 1969, c. 733, s. 13.

§ 136-19.3. Acquisition of buildings.

Where the right-of-way of a proposed highway or other transportation project necessitates the taking of a portion of a building or structure, the Department of Transportation may acquire, by condemnation or purchase, the entire building or structure, together with the right to enter upon the surrounding land for the purpose of removing said building or structure, upon a determination by the Department of Transportation based upon an affidavit of an independent real estate appraiser that the partial taking will substantially destroy the economic value or utility of the building or structure and (i) that an economy in the expenditure of public funds will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building without destroying the entire building; or (iii) that the convenience, safety or improvement of the transportation project will be promoted thereby; provided, nothing herein contained shall be deemed to give the Department of Transportation authority to condemn the underlying fee of the portion of any building or structure which lies outside the right-of-way of any existing or proposed transportation project, including a public road, street or highway. (1965, c. 660; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 2009-266, s. 8.)

§ 136-19.4. Registration of right-of-way plans.

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties

within which the project is located. The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

(b) The copy of the plans certified to the register of deeds shall consist of a Xerox, photographic, or other permanent copy, except for plans electronically transmitted pursuant to subsection (b1) of this section, and shall measure approximately 17 inches by 11 inches including no less than one and one-half inches binding space on the left-hand side.

(b1) With the approval of the county in which the right-of-way plans are to be filed, the Department may transmit the plans electronically.

(c) Notwithstanding any other provision in the law, upon receipt of said original certified copy of the right-of-way plans, the register of deeds shall record said right-of-way plans and place the same in a book maintained for that purpose, and the register of deeds shall maintain a cross-index to said right-of-way plans by number of road affected, if any, and by identification number. No probate before the clerk of the superior court shall be required.

(d) If after the approval of said final right-of-way plans the Board of Transportation shall by resolution alter or amend said right-of-way or control of access, the Department of Transportation, within two weeks from the adoption by the Board of Transportation of said alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Transportation and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the Department of Transportation for recording right-of-way plans and profile sheets in the amount set out in G.S. 161-10. (1967, c. 228, s. 1; 1969, c. 80, s. 13; 1973, c. 507, ss. 5, 12-15; 1975, c. 716, s. 7; 1977, c. 464, s. 7.1; 1999-422, s. 1; 2000-68, s. 1; 2001-390, s. 6.)

§ 136-19.4A. Required surveying information in certain acquisition plans.

The Department of Transportation shall include in any plan prepared for the purpose of acquiring right-of-way, a permanent easement, or both, that depicts property lines, right-of-way lines, or permanent easements, a set of drawings that clearly identify design alignments, baseline control points, found property-related corner markers, and new right-of-way and permanent easement corner markers. Plans subject to the requirements of this section shall document the localized coordinates for each major control point along the design alignments. The coordinates and associated localization metadata shall be based upon, and tied to, the North Carolina State Plane Coordinate system and shall be clearly identified within the plans. All property corner markers found and surveyed shall be clearly identified within the plans in accordance with general surveying standards and procedures. Each property corner marker shall be accurately tied to the design alignment or the North Carolina State Plane Coordinate system, by either a system of bearings and distances or by station and offset. (2017-137, s. 1; 2017-212, s. 1.3.)

§ 136-19.5. Utility right-of-way agreements.

(a) Before the Department of Transportation acquires or proposes to acquire additional rights-of-way for the purpose of accommodating the installation of utilities as authorized by G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements with the appropriate utilities regarding the acquisition and use of the particular right-of-way and

requiring the payment to the Department of Transportation for or recapture of all of its costs associated with that acquisition, including the use of funds allocated to such acquisition. Such agreements may take into account the fact that more than one utility can make use of the right-of-way. No such agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain under the control of the Department of Transportation.

(b) A prior agreement between the Department of Transportation and the affected utilities may be entered into but is not required when the acquisition of right-of-way is for the purpose of relocation of utilities due to construction, reconstruction, or rehabilitation of a State transportation project. The Department of Transportation shall notify the affected utility whose facilities are being relocated and the affected utility may choose not to participate in the proposed plan for right-of-way acquisition. The decision not to participate in the proposed plan of right-of-way acquisition shall not affect any other rights the utility may have as a result of the relocation of its lines or pipelines.

(c) Whenever the Department of Transportation requires the relocation of utilities, including cable service as defined in G.S. 105-164.3, located in a right-of-way for which the utility owner contributed to the cost of acquisition, the Department of Transportation shall reimburse the utility owner for the cost of moving those utilities. The Department may, with the agreement of the utility owner, acquire a replacement right-of-way and assign the easement rights of the replacement right-of-way to the utility owner.

(d) Any additional right-of-way obtained pursuant to this section which is part of a railroad right-of-way shall be returned to the railroad or its successor in interest when the Department of Transportation and the affected utilities agree that the additional right-of-way is no longer useful for utility purposes and the Department of Transportation determines that it is no longer useful for transportation purposes. (1989 (Reg. Sess., 1990), c. 962, s. 3; 2009-266, s. 9; 2017-10, s. 2.12(c); 2018-5, s. 34.14.)

§ 136-19.6. Right-of-Way Claim Report.

(a) Intent. – It is the intent of the General Assembly to provide the Department of Transportation with the resources and flexibility necessary to accelerate the time in which projects are completed while maintaining fairness to affected property owners and other citizens of this State. It is the belief of the General Assembly that providing the Department with the flexibility allowed under subsection (b) of this section will help toward achieving this intent. Therefore, the Department is encouraged to utilize the flexibility provided in subsection (b) of this section for all acquisitions of land in which the estimate of the acquisition is ten thousand dollars ($10,000) or less.

(b) Permissive Exception to Appraisal. – When the Department acquires land, and except as otherwise required by federal law, an appraisal is not required if the Department estimates that the proposed acquisition is forty thousand dollars ($40,000) or less, based on a review of data available to the Department at the time the Department begins the acquisition process. If the Department estimates the acquisition to be forty thousand dollars ($40,000) or less, the Department may prepare a Right-of-Way Claim Report instead of an appraisal. The owner of the land to be acquired may request the Department provide an

appraisal for any right-of-way claim of ten thousand dollars ($10,000) or more. The Department may contract with a qualified third party to prepare a Right-of-Way Claim Report. Any person preparing a Right-of-Way Claim Report must have a sufficient understanding of the local real estate market.

(c) Construction. – Nothing in subsection (b) of this section shall be construed as superseding or altering any provision of federal law requiring the Department to obtain an appraisal of a property the Department is attempting to acquire. (2017-57, s. 34.5(a); 2018-74, s. 1(a).)

§ 136-19.7. Residue property disposal; Department authority; definitions; classification and valuation; disposition method; proceeds; approvals required.

(a) State Policy. – It is the policy of the State that the Department of Transportation shall dispose of its residue real property as expeditiously as possible for the benefit of the citizens and taxpayers of the State.

(b) Department Authority to Dispose of Residue Property. – The Department, in accordance with this section, is vested with the power to manage, control, and dispose of real property acquired in fee simple and that the Department determines to be residue property.

(c) Definitions. – When used in this section, the following definitions apply:

(1) Appraised value. – The value of residue property determined by an appropriate area appraiser or appraiser using Department appraisal methodology.

(2) Appraiser. – An appraiser licensed or certified by the North Carolina Appraisal Board and approved by the Department to accomplish Department appraisals.

(3) Area appraiser. – A Department supervising staff appraiser currently associated with a Department area appraisal office.

(4) Current market value. – The value of property determined by the Department, in the absence of an appraised value, when obtaining an appraisal is not feasible as determined by the Department. This value shall be determined by the appropriate Division Right-of-Way agent and Right-of-Way Unit manager. The Department shall document a determination of current market value by means other than determining an appraised value.

(5) Negotiated sale. – Method of sale involving discussion and agreement of sale terms with a single or limited group of purchasers. This method may be undertaken by the Department or the Department may delegate a negotiated sale of residue property to real estate brokers licensed in this State, at the election of the Chief Engineer.

(6) Public sale. – Method of disposing of residue property utilizing advertising and solicitation of competitive bids. This method may be undertaken by the Department or the Department may delegate a public sale to a real estate broker, auctioneer, or auction firm licensed in this State, at the election of the Chief Engineer.

(7) Residue property. – Real property that is owned in fee simple by the Department that was acquired by the Department in addition to the property necessary for a

transportation project because it would have been an uneconomic remnant to the prior owner following completion of that transportation project.

(8) Residue property value. – The Department approved value of the residue property established by either the current market value or appraised value method.

(9) Uneconomic remnant. – Real property, that was located outside of a proposed right-of-way prior to acquisition, determined to have nominal or no value to the owner after a Department acquisition pursuant to G.S. 136-19.

(10) Upset bid. – At a public sale, an increased bid by a person that exceeds the highest bid received in response to the notice of public sale, or the last upset bid, as applicable, by a minimum of five percent (5%).

(d) Classification of Residue Property. – The Department shall adopt criteria to guide the Department in classifying residue property, in its opinion, according to its highest potential benefit to the Department or potential purchasers. Once classified, residue property that has not been disposed of within five years shall be reviewed and reclassified if appropriate. [Classification is as follows:]

(1) Residue property of sufficient size and access to allow commercial or residential development shall be designated "Class A."

(2) Residue property that enhances the value of adjacent property by allowing more extensive use when joined with adjacent property shall be designated "Class B."

(3) Residue property that, due to size or access, is only of value to adjacent property owners, or that is of minimal or no value, shall be designated "Class C."

(4) Residue property that has not yet been classified or may be needed by the Department for future use shall be designated "Class D."

(e) Residue Property Inventory. – The Department shall create and maintain a single comprehensive and up-to-date inventory of residue property owned in fee simple by the Department.

(f) Methods of Disposition Based on Class of Residue Property. – The Department shall utilize its best efforts to dispose of Class A, Class B, and Class C residue property within four years of its classification and in accordance with the following methods:

(1) Public sale. – The sale of Class A residue property shall be disposed of by public sale and may be sold by either sealed bid or by auction at the election of the Right-of-Way Branch of the Department. The sale of the property must be advertised by at least two of the following methods:

a. Publication once a week for at least two successive weeks in a newspaper qualified for legal advertising published in the area in which the residue property is located or, if no newspaper qualified for legal advertising is published in the area, in a newspaper having general circulation in the area in which the residue property is located.

b. Placement on the Department Web site.

c. Placement of a "For Sale" sign on the residue property.

Upset bids must be received within 10 business days following the deadline for receipt of sealed bids or closing of an auction. The highest bid shall be presented to the Board of Transportation at its next regular meeting after the deadline for receipt of bids for rejection or acceptance. The Department may reject all bids if the Department does not consider the bids to be in accord with the appraised

value as approved by the Department. The Department shall approve an appraised value for Class A residue property prior to disposition pursuant to this subdivision.

(2) Other methods of disposition for residue property. –

a. Class A, Class B, or Class C residue property may be conveyed to a State agency, public institution, and other local governmental units by negotiated sale or exchange or may be donated provided its future use is for public purposes.

b. Class B residue property may be sold, in whole or in part, where feasible, by either negotiated sale or exchange for a residue property value that is approved by the Division Right-of-Way agent and the Right-of-Way Unit manager.

c. Class C residue property may be sold to an adjacent property owner, in whole or in part, where feasible, by either negotiated sale or exchange for the residue property value that is approved by the Division Right-of-Way agent and the Right-of-Way Unit manager.

d. Class B and Class C residue property with an area of one acre or less and a residue property value of twenty-five thousand dollars ($25,000) or less may be sold by negotiated sale or exchange with an adjoining owner. The Division Right-of-Way agent or their designee may negotiate with the adjoining owners concerning the disposal of each residue for a consideration that is approved by the Division Right-of-Way agent and the Right-of-Way Unit manager.

(3) Exchange with a public utility company. – Class B and Class C residue property may be used for the purpose of exchange with a public utility company in part or in full consideration for acquiring rights-of-way. The exchange shall be based on the residue property value and the fair market value of rights-of-way to be acquired.

(4) Exchange with a property owner. – Class B and Class C residue property may be used for the purpose of exchange with another property owner in part or full consideration for acquiring rights-of-way. The exchange shall be based on the residue property value and the fair market value of rights-of-way to be acquired.

(5) Sale to persons displaced by a transportation project. – Residue property may be sold by negotiated sale to a property owner displaced by a transportation project and shall be based upon the residue property value. Residue property sold pursuant to this subdivision shall not include any real property previously owned by a displaced property owner.

(g) Proceeds to State Highway Fund. – Notwithstanding G.S. 146-15 and G.S. 146-30, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition of residue property pursuant to this section. Net proceeds received pursuant to disposition of residue property in accordance with this section, less any apportionment required by federal law or regulation regulating its use, shall be deposited in the State Highway Fund.

(h) Approvals Required. – All conveyances of residue property require Department and Board of Transportation approval. Conveyance of residue property with a residue property value of less than ten thousand dollars ($10,000) shall not require the approval of

the Governor and Council of State; otherwise Governor and Council of State approval is also required.

(i) Recordation of Conveyance. – The Department shall record all conveyances of residue property pursuant to this section in accordance with G.S. 47-27 and other applicable State law.

(j) Rule-Making Authority. – The Department shall also have the authority to adopt, amend, or repeal rules as it may deem necessary to carry out its duties under the provisions of this section.

(k) Reconveyance to Former Owner. – Nothing in this section shall preclude the reconveyance of condemned property to its former owner pursuant to G.S. 136-19.

(*l*) Report to Joint Legislative Transportation Oversight Committee. – No later than March 1, 2019, and by March 1 each year thereafter, the Department shall report to the Joint Legislative Transportation Oversight Committee on the classification and sale of residue properties pursuant to this section. At a minimum, this report shall include information on the following:

(1) The number and type of properties classified.

(2) The number and type of properties sold, including information about the manner of sale, the identity of the purchaser, and the average ratio of sale price to residue property value of the properties sold. (2017-137, s. 2(a); 2017-212, s. 1.3.)

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the Secretary of Transportation such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Department of Transportation shall issue notice requiring the person or company operating such railroad to appear before the Secretary of Transportation, at his office in Raleigh, upon a day named, which shall not be less than 10 days or more than 20 days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Secretary of Transportation shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If he shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Secretary of Transportation shall thereupon order the construction of an adequate underpass or overpass at said crossing or he may in his discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Secretary of Transportation upon the

hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by such railroad company from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten percent (10%) of the total benefits resulting from the project. The Secretary of Transportation shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Department of Transportation, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Department of Transportation, and the Department of Transportation shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Department of Transportation, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Department of Transportation such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Department of Transportation may provide.

(d) Within 60 days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Department of Transportation plans for such construction or installation, and within 10 days thereafter said Department of Transportation, through its chairman of the Department of Transportation, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Department of Transportation by said railroad company within 60 days as aforesaid, the chairman of the Department of Transportation shall have plans prepared and submit them to the railroad company. The railroad company shall within 10 days notify the chairman of the Department of Transportation of its approval of the said plans or shall have the right within such 10 days to suggest such changes and amendments in the plans so submitted by the chairman of the Department of Transportation as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Department of Transportation shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the

Secretary of Transportation, said Secretary of Transportation is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Department of Transportation shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Department of Transportation and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Department of Transportation shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Department of Transportation shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Department of Transportation may provide. If the Department of Transportation shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Secretary of Transportation, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Department of Transportation. The Department of Transportation may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Department of Transportation by the railroad company. If the Department of Transportation shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Department of Transportation in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Secretary of Transportation to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a Class 3 misdemeanor and shall only be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Department of Transportation shall be exclusive.

(g) From any order or decision so made by the Secretary of Transportation the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Secretary of Transportation, but the railroad company shall proceed to comply with such order in accordance with his terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Secretary of Transportation for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Department of Transportation

shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Secretary of Transportation, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Department of Transportation shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State highway system which have been constructed prior to July 1, 1959, or which shall be constructed thereafter shall be borne fifty percent (50%) by the railroad company and fifty percent (50%) by the Department of Transportation. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Department of Transportation as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Department of Transportation. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C.S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 11, 15; 1993, c. 539, s. 979; 1994, Ex. Sess., c. 14, s. 60, c. 24, s. 14(c).)

§ 136-20.1. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.

(a) The Department of Transportation is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part.

(b) The Department of Transportation is empowered and directed to require, when public safety demands, where two or more railroads cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper. (1907, c. 469, s. 1b; 1911, c. 197, s. 2; Ex. Sess. 1913, c. 63, s. 1; C.S., ss. 1047, 1049; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1995 (Reg. Sess., 1996), c. 673, s. 5.)

§ 136-21. Drainage of highway; application to court; summons; commissioners.

Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals,

lands other than said highway will be drained and benefited, then, and in such event, the Department of Transportation, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Environmental Quality, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 44; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 464, s. 7.1; c. 771, s. 4; 1989, c. 727, s. 218(88); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§ 136-22. View by commissioners; report; judgment.

The commissioners, or a majority of them, one of whom must be the engineer aforesaid, shall, on a day of which each party is to be notified at least five days in advance, meet on the premises, and view the highway, or proposed highway, and also the lands which may be drained by the proposed canal, and shall determine and report what lands will be drained and benefited by the construction, enlargement or improvement of such canal, and whether said drainage ought to be done exclusively by said highway authorities, and if they are of opinion that the same ought not to be drained exclusively at their expense, then they shall decide and determine the route of the canal, the dimensions and character thereof, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, the extent, area and identity of lands which shall be permitted to drain therein, and providing as far as possible for the effectual drainage of said highway, and the protection and benefit of the lands of all the parties; and they shall apportion the cost of the construction, repair and maintenance of said canal among said highway authorities and said landowners, and report the same to the court, which when confirmed by the clerk shall stand as a judgment of the court against each of the parties, his or its executors, administrators, heirs, assigns or successors. (1925, c. 85, s. 4.)

§ 136-23. Appeal.

Upon the entry of the judgment or decree aforesaid the parties to said action, or any of them, shall have the right to appeal to the superior court in term time under the same rules and regulations as apply to other special proceedings. (1925, c. 85, s. 5.)

§ 136-24. Rights of parties.

The parties to such special proceeding shall have all the rights which are secured to similar parties by Article 1 of Chapter 146 of this Code and shall be regulated by the provisions thereof and amendments thereto, insofar as the same are not inconsistent herewith. (1925, c. 85, s. 6.)

§ 136-25. Repair of road detour.

It shall be mandatory upon the Department of Transportation, its officers and employees, or any contractor or subcontractor employed by the said Department of Transportation, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route while said highways or roads are being improved or constructed, and it shall be mandatory upon the said Department of Transportation and its employees or contractors to place or cause to be placed explicit directions to the traveling public during repair of said highway or road under the process of construction. All expense of laying out and maintaining said detours shall be paid out of the State Highway Fund. (1921, c. 2, s. 11; C.S., s. 3846(s); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§ 136-26. Closing of State transportation infrastructure during construction; injury to barriers, warning signs, etc.

If it shall appear necessary to the Department of Transportation, its officers, or appropriate employees, to close any transportation infrastructure coming under its jurisdiction so as to permit proper completion of work which is being performed, the Department of Transportation, its officers or employees, may close, or cause to be closed, the whole or any portion of transportation infrastructure deemed necessary to be excluded from public travel. While any transportation infrastructure, or portion thereof, is so closed, or while any transportation infrastructure, or portion thereof, is in process of construction or maintenance, the Department of Transportation, its officers or appropriate employees, or its contractor, under authority from the Department of Transportation, may erect, or cause to be erected, suitable barriers or obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the transportation infrastructure, or portion thereof, is closed; and may place warning signs, lights and lanterns on transportation infrastructure, or portions thereof. When infrastructure is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a Class 1 misdemeanor. (1921, c. 2, s. 12; C.S., s. 3846(t); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1993, c. 539, s. 980; 2009-266, s. 10.)

§ 136-27. Connection of highways with improved streets; pipelines and conduits; cost.

When any portion of the State highway system shall run through any city or town and it shall be found necessary to connect the State highway system with improved streets of such city or town as may be designated as part of such system, the Department of Transportation shall build such connecting links, the same to be uniform in dimensions and materials with such State highways: Provided, however, that whenever any city or town may desire to widen its streets which may be traversed by the State highway, the Department of Transportation may make such arrangements with said city or town in connection with the construction of said road as, in its discretion, may seem wise and just under all the facts and circumstances in connection therewith: Provided further, that such city or town shall save the Department of Transportation harmless from any claims for damage arising from the construction of said road through such city or town and including claims for rights-of-way, change of grade line, and interference with public-service structures. And the Department of Transportation may require such city or town to cause to be laid all water, sewer,

gas or other pipelines or conduits, together with all necessary house or lot connections or services, to the curb line of such road or street to be constructed: Provided further, that whenever by agreement with the road governing body of any city or town any street designated as a part of the State highway system shall be surfaced by order of the Department of Transportation at the expense, in whole or in part, of a city or town it shall be lawful for the governing body of such city or town to declare an assessment district as to the street to be improved, without petition by the owners of property abutting thereon, and the costs thereof, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways whose tracks are laid in said street, which shall be assessed under their franchise, shall be specially assessed upon the lots or parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon by an equal rate per foot of such frontage. (1921, c. 2, s. 16; 1923, c. 160, s. 4; C.S., s. 3846(ff); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§ 136-27.1. Relocation of water and sewer lines of municipalities, nonprofit water or sewer corporations or associations, and local boards of education.

(a) The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State transportation project right-of-way, that are necessary to be relocated for a State transportation improvement project and that are owned by: (i) a municipality with a population of 10,000 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by a County as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 10,000 according to the latest decennial census; or (vii) a local board of education.

(b) A municipality with a population of greater than 10,000 shall pay a percentage of the nonbetterment cost for relocation of water and sewer lines owned by the municipality and located within the existing State transportation project right-of-way that are necessary to be relocated for a State transportation improvement project. The percentage shall be based on the municipality's population, with the Department paying the remaining costs, as follows:

(1) A municipality with a population of greater than 10,000, but less than 25,000, shall pay twenty-five percent (25%) of the cost.

(2) A municipality with a population of 25,000 or greater, but less than 50,000, shall pay fifty percent (50%) of the cost.

(3) A municipality with a population of 50,000 or greater shall pay one hundred percent (100%) of the cost. (1983 (Reg. Sess., 1984), c. 1090; 1985, c. 479, s. 186(a); 1985 (Reg. Sess., 1986), c. 1018, s. 11; 1993 (Reg. Sess., 1994), c. 736, s. 1; 1995, c. 33, s. 1; c. 266, s. 1.1; 2009-266, s. 11; 2015-111, s. 1; 2015-241, s. 29.20(a).)

§ 136-27.2. Relocation of county-owned natural gas lines located on Department of Transportation right-of-way.

The Department of Transportation shall pay the nonbetterment cost for the relocation of county-owned natural gas lines, located within the existing State transportation project right-of-way, that the Department needs to relocate due to a State transportation improvement project. (2002-126, s. 26.18(a); 2009-266, s. 12.)

§ 136-27.3. Relocation of municipalities' utilities by Department; repayment by municipalities.

When requiring municipalities to relocate utilities under its power granted in G.S. 136-18(10), the Department may enter into agreements with municipalities to provide that the necessary engineering and utility construction be accomplished by the Department on a reimbursement basis as follows:

(1) Reimbursement to the Department shall be due after completion of the work and within 60 days after date of invoice.

(2) Interest shall be paid on any unpaid balance due at a variable rate of the prime rate plus one percent (1%). (2012-142, s. 24.22; 2012-145, s. 6.1.)

§ 136-27.4. Use of certain right-of-way for sidewalk dining.

(a) The Department may enter into an agreement with any local government permitting use of the State right-of-way associated with components of the State highway system and located within the zoning jurisdiction of the local government for sidewalk dining activities. For purposes of this section, "sidewalk dining activities" means serving food and beverages from a restaurant abutting State right-of-way to customers seated in the State right-of-way. The agreement between the Department and the local government shall provide that the local government is granted the administrative right to permit sidewalk dining activities that, at a minimum, comply with all of the following requirements and conditions:

(1) Tables, chairs, and other furnishings shall be placed a minimum of six feet from any travel lane.

(2) Tables, chairs, and other furnishings shall be placed in such a manner that at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object, remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act.

(3) Tables, chairs, and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilations areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.

(4) The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.

(5) The restaurant operator shall provide evidence of adequate liability insurance in an amount satisfactory to the local government, but in no event in an amount less than the amount specified by the local government under G.S. 160A-485

as the limit of the local government's waiver of immunity or the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is greater. The insurance shall protect and name the Department and the local government as additional insureds on any policies covering the business and the sidewalk activities.

(6) The restaurant operator shall provide an agreement to indemnify and hold harmless the Department or the local government from any claim resulting from the operation of sidewalk dining activities.

(7) The restaurant operator shall provide a copy of all permits and licenses issued by the State, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the county or city for exterior alterations or improvements to the restaurant.

(8) The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the Department, the local government, its agents or employees, or by any other governmental entity or public utility.

(9) Any other requirements deemed necessary by the Department, either for a particular local government or a particular component of the State highway system.

A local government given the administrative right to permit sidewalk dining activities under this section may impose additional requirements on a case-by-case basis, and nothing in this section requires the local government to issue or maintain any permit for sidewalk dining activities if, in the opinion of the local government, such activities cannot be conducted in a safe manner. Nothing in this section requires the Department to give a local government the right to establish a permit program for sidewalk dining activities if, in the opinion of the Department, such activities cannot be conducted in a safe manner.

(b) A municipality applying to the Department for administrative rights under this section shall:

(1) Enact an ordinance consistent with, but not necessarily limited to, the requirements of this section.

(2) For applications along a federal-aid route or where the laws of the United States otherwise require, obtain permission from the Federal Highway Administration to permit the right-of-way to be used for the sidewalk dining. (2013-266, s. 2.)

§ 136-28. Repealed by Session Laws 1971, c. 972, s. 6.

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over five million dollars ($5,000,000) that the Department of Transportation may let for construction, maintenance, operations, or repair necessary to carry out the provisions of this Chapter, shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into

pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) For contracts let to carry out the provisions of this Chapter in which the amount of work to be let to contract for transportation infrastructure construction or repair is five million dollars ($5,000,000) or less, and for transportation infrastructure maintenance, excluding resurfacing, that is five million dollars ($5,000,000) per year or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. Where public advertising is used for a contract subject to this subsection, the Highway Division shall post the advertisement at least 14 calendar days prior to the letting date of the contract. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened. The Highway Divisions shall publish the results of a bidding process no later than three business days after the contract bid upon is awarded.

(b1) Notwithstanding any provision of G.S. 136-28.5 to the contrary, and except as prohibited by other State or federal law, the Department of Transportation shall, at the time and place bids solicited for a contract subject to this section are opened, make public all cost estimates prepared by the Department for the purpose of comparing the bids.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and G.S. 136-28.3 and Chapter 143C of the General Statutes, the State Budget Act.

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the Secretary's designee that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements. For purposes of this section, the term "emergency" includes any of the following that is unanticipated, results in detours

or deters the free movement of goods and services, and requires an estimated expenditure of ten million dollars ($10,000,000) or less in construction, maintenance, or repair costs:

(1) A bridge closure.

(2) A road closure.

(3) A weight restriction.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with the planning, operations, design, maintenance, repair, and construction of transportation infrastructure. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. However, the Department of Transportation shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the Department of Transportation under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Department of Transportation shall not award a cost plus percentage of cost agreement or contract for any purpose. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities.

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(*l*) The Department of Transportation may enter into contracts for public-private participation in providing litter removal from State right-of-way. Selection of firms to

perform this work shall be made using a best value procurement process and shall be without regard to other provisions of law regarding the Adopt-A-Highway Program administered by the Department. Acknowledgement of sponsors may be indicated by appropriate signs that shall be owned by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue guidelines, rules, and policies necessary to administer this subsection.

(m) The Department of Transportation may enter into contracts for public-private participation at State-owned rest areas. Selection of firms shall be made using a best value procurement process. Recognition of sponsors in the program may be indicated by appropriate acknowledgment for any services provided. The size, style, specifications, and content of the acknowledgment shall be determined in the sole discretion of the Department. Revenues generated pursuant to a contract initiated under this subsection shall be shared with Department of Transportation at a predetermined percentage or rate, and shall be earmarked by the Department to maintain the State-owned rest areas from which the revenues are generated. The Department of Transportation may issue guidelines, rules, and policies necessary to administer this subsection. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1; 1997-196, s. 1; 1999-25, ss. 2, 3; 2001-424, ss. 27.9(a), 27.9(b); 2002-151, s. 1; 2006-68, s. 1; 2006-203, s. 75; 2007-439, ss. 3, 4; 2009-266, s. 1; 2009-475, s. 12; 2010-194, s. 19; 2011-145, s. 28.3; 2011-326, s. 15(t); 2013-340, s. 2.1; 2016-94, ss. 35.5(a), 35.6(a); 2018-5, s. 34.15.)

§ 136-28.2. Relocated transportation infrastructure; contracts let by others.

The Department of Transportation is authorized to permit power companies and governmental agencies, including agencies of the federal government, when it is necessary to relocate transportation infrastructure by reason of the construction of a dam, to let contracts for the construction of the relocated transportation infrastructure. The construction shall be in accordance with the Department of Transportation standards and specifications. The Department of Transportation is further authorized to reimburse the power company or governmental agency for betterments arising out of the construction of the relocated transportation infrastructure, provided the bidding and the award is in accordance with the Department of Transportation's regulations and the Department of Transportation approves the award of the contract. (1971, c. 972, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 2009-266, s. 13.)

§ 136-28.3. Repealed by Session Laws 1973, c. 1194, s. 6.

§ 136-28.4. (Expires August 31, 2022) State policy concerning participation by disadvantaged minority-owned and women-owned businesses in transportation contracts.

(a) It is the policy of this State, based on a compelling governmental interest, to encourage and promote participation by disadvantaged minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning,

design, preconstruction, construction, alteration, or maintenance of State transportation infrastructure and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and among themselves in all efforts to conduct outreach and to encourage and promote the use of disadvantaged minority-owned and women-owned businesses in these contracts.

(b) At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State transportation infrastructure and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's continued compelling governmental interest in remedying such race and gender discrimination in transportation contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.

(b1) **(Effective until April 1, 2018)** Based upon the findings of the Department's 2014 study entitled "North Carolina Department of Transportation Disparity Study, 2014, " hereinafter referred to as "Study ", the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish aspirational goals every three years, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with federal methodology, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged

minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(b1) **(Effective April 1, 2018)** Based upon the findings of the Department's 2014 study entitled "North Carolina Department of Transportation Disparity Study, 2014," hereinafter referred to as "Study", the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish a combined aspirational goal every three years, not a mandatory goal, in the form of a percentage, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. This aspirational goal for disadvantaged minority-owned and women-owned businesses shall be established consistent with federal methodology and shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish a contract-specific goal or project-specific goal for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) The following definitions apply in this section:

(1) "Contract" includes, but is not limited to, contracts let under the procedures set forth in G.S. 136-28.1(a) and (b).

(1a) "Disadvantaged Business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 26.5 Subpart A or any subsequently promulgated replacement regulation.

(2) "Minority"' includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.

(3) "Women" means nonminority persons born of the female sex.

(d) The Department shall report annually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned businesses and women-owned businesses and any program adopted to promote contracting opportunities for those businesses. Following each study of availability and utilization, the Department shall report to the Joint Legislative Transportation Oversight Committee on the results of

the study for the purpose of determining whether the provisions of this section should continue in force and effect.

(e) This section expires August 31, 2022. (1983, c. 692, s. 3; 1989, c. 692, s. 1.5; 1989 (Reg. Sess., 1990), c. 1066, s. 143(a); 2006-261, s. 4; 2009-266, s. 3; 2010-165, s. 9; 2013-340, s. 2.2; 2014-108, s. 7(a); 2015-231, s. 3; 2017-57, s. 34.15(a).)

§ 136-28.5. Construction diaries; bid analysis and management system.

(a) Diaries kept in connection with construction or repair contracts entered into pursuant to G.S. 136-28.1 shall not be considered public records for the purposes of Chapter 132 of the General Statutes until the final estimate has been paid.

(b) Analyses generated by the Department of Transportation's Bid Analysis and Management System, including work papers, documents and the output of automated systems associated with the analyses of bids made by the Bid Analysis and Management System, are confidential and are not subject to the public records provisions of Chapter 132 of the General Statutes.

(c) Notwithstanding G.S. 132-1, bids and documents submitted in response to an advertisement or request for proposal under this Chapter shall not be public record until the Department issues a decision to award or not to award the contract. (1987, c. 380, s. 1; 1991, c. 716, s. 1; 2012-78, s. 11.)

§ 136-28.6. Participation by the Department of Transportation with private developers.

(a) The Department of Transportation may participate in private engineering and construction contracts for State transportation systems.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a transportation project on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a transportation project on a mutually adopted transportation plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the right-of-way is furnished without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let for the project.

(e) Department of Transportation participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on an annual basis, to the Joint Legislative Transportation Oversight Committee on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering

and construction contracts under this section, as well as (i) agreements by counties and municipalities to participate in private engineering and construction contracts under subsection (i) of this section and (ii) pass-through funding from private developers to counties or municipalities for State transportation projects. The information in the report required by this subsection shall be set forth separately for each division of the Department of Transportation.

(i) Counties and municipalities may participate financially in private engineering, land acquisition, and construction contracts for transportation projects which meet the requirements of subsection (b) of this section within their jurisdiction.

(j) The Department is authorized to create a statewide pilot program for participation in cost-sharing for transportation improvements in connection with driveway permits. The Department may create a fair share allocation formula and other procedures to facilitate the pilot program. The formula shall uniformly determine the value of transportation improvements and apportion these costs, on a project-by-project basis, among applicable parties, including the Department and private property developers. Transportation improvement projects developed under the pilot program may include the provision of ingress and egress to new private development prior to acceptance of the improved portion of the roads constructed providing access to the development by the State or local government for maintenance as a public street or highway. Nothing in this section shall require a private developer to participate in the pilot program to obtain a driveway permit or other approval from the Department or any local government.

(k) Nothing in this section shall obligate the Department to custodial responsibility for managing or distributing monies in the application of this program.

(l) The Department shall report on the pilot program to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Commission no later than the convening date of the 2021 Regular Session of the General Assembly. (1987, c. 860, ss. 1, 2; 1989, c. 749, s. 1; 1991, c. 272, s. 1; 1993, c. 183, s. 1; 1995, c. 358, s. 5; c. 437, s. 3; c. 447, ss. 1, 2; 2002-170, s. 1; 2008-164, s. 2; 2009-266, s. 14; 2013-245, s. 1; 2014-100, s. 34.2; 2015-241, s. 29.12(e).)

§ 136-28.6A: Expired by Session Laws 2009-235, s. 2, as amended by Session Laws 2014-58, s. 7 and Session Laws 2016-90, s. 2.3, effective July 1, 2017.

§ 136-28.6B. Applicable stormwater regulation.

For the purposes of stormwater regulation, any construction undertaken by a private party pursuant to the provisions of G.S. 136-18(17), 136-18(27), 136-18(29), 136-18(29a), 136-28.6, or 136-28.6A shall be considered to have been undertaken by the Department, and the stormwater law and rules applicable to the Department shall apply. (2017-10, s. 2.11.)

§ 136-28.7. Contract requirements relating to construction materials.

(a) The Department of Transportation shall require that every contract for construction or repair necessary to carry out the provisions of this Chapter shall contain a provision requiring that

all steel and iron permanently incorporated into the construction or repair project be produced in the United States.

(b) Subsection (a) shall not apply whenever the Department of Transportation determines in writing that this provision required by subsection (a) cannot be complied with because such products are not produced in the United States in sufficient quantities to meet the requirements of such contracts or cannot be complied with because the cost of such products produced in the United States unreasonably exceeds other such products.

(c) The Department of Transportation shall apply this section consistent with the requirements in 23 C.F.R. § 635.410(b)(4).

(d) The Department of Transportation shall not authorize, provide for, or make payments to any person pursuant to any contract containing the provision required by subsection (a) unless such person has fully complied with such provision. (1989, c. 692, s. 1.18; c. 770, ss. 74.12, 74.14, 74.15; 2002-151, s. 3.)

§ 136-28.8. Use of recycled materials in construction.

(a) It is the intent of the General Assembly that the Department of Transportation continue to expand its use of recycled materials in its construction and maintenance programs.

(b) The General Assembly declares it to be in the public interest to find alternative ways to use certain recycled materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. The Department shall, consistent with economic feasibility and applicable engineering and environmental quality standards, use:

(1) Rubber from tires in road pavements, subbase materials, or other appropriate applications.

(2) Recycled materials for guard rail posts, right-of-way fence posts, and sign supports.

(3) Recycling technology, including, but not limited to, hot in-place recycling, in road and highway maintenance.

(4) Recycled asphalt, provided that minimum content standards are met and the material meets minimum specifications for the project.

(c) As a part of its scheduled projects, the Department shall conduct additional research, which may include demonstration projects, on the use of recycled materials in construction and maintenance.

(d) The Department shall review and revise existing bid procedures and specifications to eliminate any procedures and specifications that explicitly discriminate against recycled materials in construction and maintenance, except where the procedures and specifications are necessary to protect the health, safety, and welfare of the people of this State.

(e) The Department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of recycled materials in construction and maintenance and shall, to the extent economically practicable, require the use of recycled materials.

(f) All agencies shall cooperate with the Department in carrying out the provisions of this section.

(g) On or before October 1 of each year, the Department shall report to the Division of Environmental Assistance and Outreach of the Department of Environmental Quality as to the amounts and types of recycled materials that were specified or used in contracts that were entered into during the previous fiscal year. On or before January 15 of each year, the Division of Environmental Assistance and Outreach shall prepare a summary of this report and submit the summary to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division. The summary of this report shall also be included in the report required by G.S. 130A-309.06(c).

(h) The Department, in consultation with the Department of Environmental Quality, shall determine minimum content standards for recycled materials.

(i) This section is broadly applicable to all procurements by the Department if the quality of the product is consistent with the requirements of the bid specifications.

(j) The Department may adopt rules to implement this section. (1989, c. 784, s. 6; 1993, c. 256, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 9; 1997-443, s. 11A.119(a); 1999-237, s. 27.4; 2001-452, s. 3.6; 2010-31, s. 13.1(e); 2012-8, s. 1; 2012-200, s. 25; 2015-241, s. 14.30(u); 2017-57, s. 14.1(e).)

§ 136-28.9. Retainage – construction contracts.

Notwithstanding the provisions of G.S. 147-69.1, 147-77, 147-80, 147-86.10, and 147-86.11, or any other provision of the law, the Department of Transportation is authorized to enter into trust agreements with banks and contractors for the deposit of retainage and for the payment to contractors of income on these deposits, in connection with transportation construction contracts, in trust accounts with banks in accordance with Department of Transportation regulations, including deposit insurance and collateral requirements. The Department of Transportation may contract with those banks without trust departments in addition to those with trust departments. Funds deposited in any trust account shall be invested only in bonds, securities, certificates of deposits, or other forms of investment authorized by G.S. 147-69.1 for the investment of State funds. The trust agreement may also provide for interest to be paid on uninvested cash balances. (1989 (Reg. Sess., 1990), c. 1074, s. 38; 2009-266, s. 15.)

§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.

(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund construction and repair projects of five hundred thousand dollars ($500,000) or less, and maintenance projects of five hundred thousand dollars ($500,000) or less per year, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation.

(b) The letting of contracts under this section is not subject to any of the provisions of G.S. 136-28.1 relating to the letting of contracts. The Department may waive the bonding requirements of Chapter 44A of the General Statutes and the licensing requirements of Chapter 87 for contracts awarded under this section.

(c) The Secretary of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on the implementation of this section. The information in the report required by this subsection shall be set forth separately for each division of the Department of Transportation. (1993, c. 561, s. 65; 1999-25, s. 1; 2009-266, s. 2; 2015-241, s. 29.12(g).)

§ 136-28.11. Design-build construction of transportation projects.

(a) Design-Build Contracts Authorized. – Notwithstanding any other provision of law, the Board of Transportation may award contracts each fiscal year for construction of transportation projects on a design-build basis.

(b) Design-Build Contract Amounts; Basis of Award. – The Department may award contracts for the construction of transportation projects on a design-build basis of any amount. The Department shall endeavor to ensure design-build projects are awarded on a basis to maximize participation, competition, and cost benefit. On any project for which the Department proposes to use the design-build contracting method, the Department shall attempt to structure and size the contracts for the project in order that contracting firms and engineering firms based in North Carolina have a fair and equal opportunity to compete for the contracts.

(c) Disadvantaged Business Participation Goals. – The provisions of G.S. 136-28.4 and 49 C.F.R. Part 26 shall apply to the award of contracts under this section.

(d) Repealed by Session Laws 2013-360, s. 34.2(c), effective July 1, 2013.

(e) Reporting Requirements. – The Department, for any proposed design-build project projected to have a construction cost in excess of fifty million dollars ($50,000,000), shall present to the Joint Legislative Transportation Oversight Committee information on the scope and nature of the project and the reasons the development of the project on a design-build basis will best serve the public interest. (2001-424, s. 27.2(a); 2002-151, s. 2; 2007-357, s. 1; 2011-145, s. 28.4; 2013-360, s. 34.2(c).)

§ 136-28.12. Litter removal coordinated with mowing of highway rights-of-way.

The Department of Transportation shall, to the extent practicable, schedule the removal of debris, trash, and litter from highways and highway rights-of-way prior to the mowing of highway rights-of-way. The Department of Transportation shall include as a term of any contract that it enters into for the mowing of a highway right-of-way that the contracting party shall, to the extent practicable, coordinate with the scheduled removal of debris, trash, and litter from the highway and highway right-of-way prior to the mowing of the highway right-of-way. (2001-512, s. 3.)

§ 136-28.13. Participation in the energy credit banking and selling program.

The Department of Transportation shall participate in the energy credit banking and selling program under G.S. 143-58.4 and is eligible to receive proceeds from the Alternative Fuel

Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4. (2005-413, s. 2.)

§ 136-28.14. Project contractor licensing requirements.

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

(1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.

(2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings. (2006-261, s. 1.)

§ 136-28.15. Diesel vehicles purchase warranty requirement.

Every new motor vehicle transferred to or purchased by the Department of Transportation that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in G.S. 143-58.4. This section does not apply if the intended use, as determined by the Department, of the new motor vehicle requires a type of vehicle for which an express manufacturer's warranty allows the use of B-20 fuel is not available. (2007-420, s. 3.)

§ 136-29. Adjustment and resolution of Department of Transportation contract claim.

(a) A contractor who has completed a contract with the Department of Transportation let in accordance with Article 2 of this Chapter and who has not received the amount he claims is due under the contract may submit a verified written claim to the Secretary of Transportation for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives his final statement from the Department and shall state the factual basis for the claim.

The Secretary or the Secretary's designee shall investigate a submitted claim within 90 days of receiving the claim or within any longer time period agreed to by the Secretary or the Secretary's designee and the contractor. The contractor may appear before the Secretary or the Secretary's designee, either in person or through counsel, to present facts and arguments in support of the claim. The Secretary or the Secretary's designee may allow, deny, or compromise the claim, in whole or in part. The Secretary or the Secretary's designee shall give the contractor a written statement of the decision on the contractor's claim.

(b) A contractor who is dissatisfied with the Secretary or the Secretary's designee's decision on the contractor's claim may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the written statement of the decision.

(c) As to any portion of a claim that is denied by the Secretary or the Secretary's designee, the contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six months of receipt of the final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(d) The provisions of this section shall be part of every contract let in accordance with Article 2 of this Chapter between the Department of Transportation and a contractor. A provision in a contract that conflicts with this section is invalid. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667; 1965, c. 55, s. 11; 1967, c. 873; 1973, c. 507, ss. 5, 17, 18; 1977, c. 464, s. 7.1; 1983, c. 761, s. 191; 1987, c. 847, s. 3; 2009-266, s. 16.)

§ 136-30. Uniform signs and other traffic control devices on highways, streets, and public vehicular areas.

(a) State Highway System. – The Department of Transportation may number and mark highways in the State highway system. All traffic signs and other traffic control devices placed on a highway in the State highway system must conform to the Uniform Manual. The Department of Transportation shall have the power to control all signs within the right-of-way of highways in the State highway system. The Department of Transportation may erect signs directing persons to roads and places of importance.

(b) Municipal Street System. – All traffic signs and other traffic control devices placed on a municipal street system street must conform to the appearance criteria of the Uniform Manual. All traffic control devices placed on a highway that is within the corporate limits of a municipality but is part of the State highway system must be approved by the Department of Transportation.

(c) Public Vehicular Areas. – Except as provided in this subsection, all traffic signs and other traffic control devices placed on a public vehicular area, as defined in G.S. 20-4.01, must conform to the Uniform Manual. The owner of private property that contains a public vehicular area may place on the property a traffic control device, other than a sign designating a parking space for handicapped persons, as defined in G.S. 20-37.5, that differs in material from the uniform device but does not differ in shape, size, color, or any other way from the uniform device. The owner of private property that contains a public vehicular area may place on the property a sign designating a parking space for handicapped persons that differs in material and color from the uniform sign but does not differ in shape, size, or any other way from the uniform device.

(d) Definition. – As used in this section, the term "Uniform Manual" means the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the United States Department of Transportation, and any supplement to that Manual adopted by the North Carolina Department of Transportation.

(e) Exception for Public Airport Traffic Signs. – Publicly owned airports, as defined in Chapter 63 of the General Statutes, shall be exempt from the requirements of subsections (b) and (c) of this section with respect to informational and directional signs, but not with respect to regulatory traffic signs. (1921, c. 2, ss. 9(a), 9(b); C.S., ss. 3846(q), 3846(r); 1927, c. 148, s. 54; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1991, c. 530, s. 1; 1991 (Reg. Sess., 1992), c. 818, s. 2; 1993, c. 51.)

§ 136-30.1. Center line and pavement edge line markings.

(a) The Department of Transportation shall mark with center lines and edge lines all interstate and primary roads and all paved secondary roads having an average traffic volume of 100 vehicles per day or more, and which are traffic service roads forming a connecting link in the State highway system. The Department of Transportation shall not be required to mark with center and edge lines local subdivision roads, loop roads, dead-end roads of less than one mile in length or roads the major purpose of which is to serve the abutting property, nor shall the Department of

Transportation be required to mark with edge lines those roads on which curbing has been installed or which are less than 16 feet in width.

(b) Whenever the Department of Transportation shall construct a new paved road, relocate an existing paved road, resurface an existing paved road, or pave an existing road which under the provisions of subsection (a) hereof is required to be marked with lines, the Department of Transportation shall, within 30 days from the completion of the construction, resurfacing or paving, mark the said road with the lines required in subsection (a) hereof.

(c) Repealed by Session Laws 1991, c. 530, s. 2. (1969, c. 1172, s. 1; 1973, c. 496, ss. 1, 2; c. 507, s. 5; 1977, c. 464, s. 7.1; 1991, c. 530, s. 2.)

§ 136-30.2. Prohibit the use of high content arsenic glass beads in paint used for pavement marking.

No pavement markings shall be placed on or along any road in the State highway system, in any municipal street system, or on any public vehicular area, as defined in G.S. 20-4.01, that is made from paint that has been mixed, in whole or in part, with reflective glass beads containing more than 75 parts per million inorganic arsenic, as determined by the United States Environmental Protection Agency Method 6010B in conjunction with the United States Environmental Protection Agency Method 3052 modified. (2010-180, s. 17(b).)

§ 136-31: Repealed by Session Laws 1991, c. 530, s. 3.

§ 136-32. Regulation of signs.

(a) Commercial Signs. – No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of G.S. 136-30, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial or political advertising, except as provided in subsections (b) through (e) of this section: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department of Transportation or by any local authority referred to in G.S. 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a Class 1 misdemeanor. The Department of Transportation may remove any signs erected without authority or allowed to remain beyond the deadline established in subsection (b) of this section.

(b) Compliant Political Signs Permitted. – During the period beginning on the 30th day before the beginning date of "one-stop" early voting under G.S. 163A-1300 and ending on the 10th day after the primary or election day, persons may place political signs in the right-of-way of the State highway system as provided in this section. Signs must be placed in compliance with subsection (d) of this section and must be removed by the end of the period prescribed in this subsection.

(c) Definition. – For purposes of this section, "political sign" means any sign that advocates for political action. The term does not include a commercial sign.

(d) Sign Placement. – The permittee must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected. Signs must be placed in accordance with the following:

(1) No sign shall be permitted in the right-of-way of a fully controlled access highway.
(2) No sign shall be closer than three feet from the edge of the pavement of the road.
(3) No sign shall obscure motorist visibility at an intersection.
(4) No sign shall be higher than 42 inches above the edge of the pavement of the road.
(5) No sign shall be larger than 864 square inches.
(6) No sign shall obscure or replace another sign.

(e) Penalties for Unlawful Removal of Signs. – It is a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a political sign that is lawfully placed under this section.

(f) Application Within Municipalities. – Pursuant to Article 8 of Chapter 160A of the General Statutes, a city may by ordinance prohibit or regulate the placement of political signs on rights-of-way of streets located within the corporate limits of a municipality and maintained by the municipality. In the absence of an ordinance prohibiting or regulating the placement of political signs on the rights-of-way of streets located within a municipality and maintained by the municipality, the provisions of subsections (b) through (e) of this section shall apply. (1921, c. 2, s. 9(b); C.S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1991 (Reg. Sess., 1992), c. 1030, s. 39; 1993, c. 539, s. 981; 1994, Ex. Sess., c. 24, s. 14(c); 2011-408, s. 1; 2017-6, s. 3.)

§ 136-32.1. Misleading signs prohibited.

No person shall erect or maintain within 100 feet of any highway right-of-way any warning or direction sign or marker of the same shape, design, color and size of any official highway sign or marker erected under the provisions of G.S. 136-30, or otherwise so similar to an official sign or marker as to appear to be an official highway sign or marker. Any person who violates any of the provisions of this section is guilty of a Class 1 misdemeanor. (1955, c. 231; 1991 (Reg. Sess., 1992), c. 1030, s. 40; 1993, c. 539, s. 982; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.

(a) If any person, firm or corporation shall place or cause to be placed any lights, which are flashing, moving, rotating, intermittent or steady spotlights, in such a manner and place and of such intensity:

(1) Which, by the use of flashing or blinding lights, blinds, tends to blind and effectively hampers the vision of the operator of any motor vehicle passing on a public highway; or
(2) Which involves red, green or amber lights or reflectorized material and which resembles traffic signal lights or traffic control signs; or
(3) Which, by the use of lights, reasonably causes the operator of any motor vehicle passing upon a public highway to mistakenly believe that there is approaching

or situated in his lane of travel some other motor vehicle or obstacle, device or barricade, which would impede his traveling in such lane;

[he or it] shall be guilty of a Class 3 misdemeanor.

(b) Each 10 days during which a violation of the provisions of this section is continued after conviction therefor shall be deemed a separate offense.

(c) The provisions of this section shall not apply to any lights or lighting devices erected or maintained by the Department of Transportation or other properly constituted State or local authorities and intended to effect or implement traffic control and safety. Nothing contained in this section shall be deemed to prohibit the otherwise reasonable use of lights or lighting devices for advertising or other lawful purpose when the same do not fall within the provisions of subdivisions (1) through (3) of subsection (a) of this section.

(d) The enforcement of this section shall be the specific responsibility and duty of the State Highway Patrol in addition to all other law-enforcement agencies and officers within this State; provided, however, no warrant shall issue charging a violation of this section unless the violation has continued for 10 days after notice of the same has been given to the person, firm or corporation maintaining or owning such device or devices alleged to be in violation of this section. (1959, c. 560; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, ss. 7.1, 17; 1993, c. 539, s. 983; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 136-32.3. Litter enforcement signs.

The Department of Transportation shall place signs on the Interstate Highway System notifying motorists of the penalties for littering. The signs shall include the amount of the maximum penalty for littering. The Department of Transportation shall determine the locations of and distance between the signs. (2001-512, s. 4.)

§ 136-33. Damaging or removing signs; rewards.

(a) No person shall willfully deface, damage, knock down or remove any sign posted as provided in G.S. 136-26 or G.S. 136-30.

(b) No person, without just cause or excuse, shall have in his possession any highway sign as provided in G.S. 136-26 or G.S. 136-30.

(b1) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(c) The Department of Transportation is authorized to offer a reward not to exceed five hundred dollars ($500.00) for information leading to the arrest and conviction of persons who violate the provisions of this section, such reward to be paid from funds of the Department of Transportation.

(d) The enforcement of this section shall be the specific responsibility and duty of the State Highway Patrol in addition to all other law-enforcement agencies and officers within this State. (1927, c. 148, s. 57; 1971, c. 671; 1973, c. 507, s. 5; 1975, cc. 11, 93, c. 716, s. 7; 1977, c. 464, ss. 7.1, 18; 1991 (Reg. Sess., 1992), c. 1030, s. 41; 1993, c. 539, s. 984; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 136-33.1. Signs for protection of cattle.

Upon written request of any owner of more than five head of cattle, the Department of Transportation shall erect appropriate and adequate signs on any road or highway under the control of the Department of Transportation, such signs to be so worded, designed and located as to give

adequate warning of the presence and crossing of cattle. Such signs shall be located at points agreed upon by the owner and the Department of Transportation at points selected to give reasonable warning of places customarily or frequently used by the cattle of said owner to cross said road or highway, and no one owner shall be entitled to demand the placing of signs at more than one point on a single or abutting tracts of land. (1949, c. 812; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

§ 136-33.2: Repealed by Session Laws 2007-164, s. 2, effective July 1, 2007.

§ 136-33.2A. Signs marking beginning of reduced speed zones.

If a need to reduce speed in a speed zone is determined to exist by an engineer of the Department, there shall be a sign erected, of adequate size, at least 600 feet in advance of the beginning of any speed zone established by any agency of the State authorized to establish the same, which shall indicate a change in the speed limit. (2007-164, s. 3.)

§ 136-34. Department of Transportation authorized to furnish road equipment to municipalities.

The Department of Transportation is hereby authorized to furnish municipalities road maintenance equipment to aid such municipalities in the maintenance of streets upon such rental agreement as may be agreed upon by the Department of Transportation and the said municipality. Such rental, however, is to be at least equal to the cost of operation, plus wear and tear on such equipment; and the Department of Transportation shall not be required to furnish equipment when to do so would interfere with the maintenance of the streets and highways under the control of the Department of Transportation. (1941, c. 299; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 19.)

§ 136-34.1. Department of Transportation authorized to furnish road maintenance materials to municipalities.

The Department of Transportation is authorized, in its discretion, to furnish municipalities road maintenance materials to aid municipalities in the maintenance of streets upon agreement for reimbursement, as may be required by the Department and agreed to by the municipality. The agreement shall provide for reimbursement in an amount at least equal to the cost of the materials, together with the actual reasonable cost of any handling and storage of the materials and of administering the reimbursement agreement, all as solely determined by the Department. In no event shall the Department of Transportation be required to furnish road maintenance materials when, in the sole determination of the Department of Transportation, to do so would interfere with the maintenance of the streets and highways under its control. Notwithstanding any other provision of law, the provision of and reimbursement for materials under this section shall not be deemed a sale for any purpose. (2009-332, s. 3.)

§ 136-35. Cooperation with other states and federal government.

It shall also be the duty of the Department of Transportation, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads and other transportation systems so as to form a system of intercounty, interstate, and national highways and transportation systems. The Department of Transportation may enter into reciprocal agreements with other states and the United States Department of Transportation to

perform inspection work and to pay reasonable fees for inspection work performed by others in connection with supplies and materials used in transportation construction and repair. (1915, c. 113, s. 12; C.S., s. 3584; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1985, c. 127; c. 689, s. 31; 2009-266, s. 17.)

§ 136-36. Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-37. Repealed by Session Laws 1959, c. 687, s. 5.

§§ 136-38 through 136-41. Repealed by Sessions Laws 1951, c. 260, s. 4.

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) Upon appropriation of funds by the General Assembly to the Department of Transportation for State aid to municipalities, one-half of the amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. The second one-half of the amount appropriated shall be allocated in cash on or before January 1 of each year to the cities and towns of the State in accordance with this section.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 and January 1 of each year as provided in this section. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the

amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the consolidated city-county, as defined by G.S. 160B-2(1), shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county.

(c) Any funds allocated to the unincorporated area known as the Butner Reservation shall be transferred to the Town of Butner.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6; 1995, c. 390, s. 26; c. 461, s. 18; 1997-443, s. 11A.118(a); 2000-165, s. 1; 2002-120, s. 5; 2007-269, s. 13; 2011-145, s. 28.10(a); 2013-183, s. 3.1; 2014-100, s. 34.1; 2015-241, s. 29.17D(a).)

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal requirement that the most recent required election shall have been held may be waived only:

(1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

(2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars ($100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

(1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and

(2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 159-8 and G.S. 159-13, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street lighting, or at least four of the following municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945. (1963, c. 854, ss. 3, 3½; 1985 (Reg. Sess., 1986), c. 934, ss. 5, 6; 1999-458, s. 5; 2017-102, s. 20.)

§ 136-41.2A. Eligibility for funds; municipalities incorporated before January 1, 1945.

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has been within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality.

(b) The provisions of this section apply only to municipalities incorporated prior to January 1, 1945. (1985 (Reg. Sess., 1986), c. 934, s. 4.)

§ 136-41.2B. Eligibility for funds; municipalities with no road miles ineligible.

No municipality shall be eligible to receive funds under G.S. 136-41.1 unless the municipality maintains public streets that (i) are within its jurisdiction and (ii) do not form a part of the State highway system. (2011-145, s. 28.10(b).)

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

(a) Uses of Funds. – Except as otherwise provided in this subsection, the funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns primarily for the resurfacing of streets within the corporate limits of the municipality but may also be used for the purposes of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways, greenways, or sidewalks. The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall not be expended for the construction of a sidewalk into which is built a mailbox, utility pole, fire hydrant, or other similar obstruction that would impede the clear passage of pedestrians on the sidewalk.

(b) Records and Annual Statement. – Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand. The Department of Transportation shall submit to the chairs of the Joint Legislative Transportation Oversight Committee an annual report no later than October 1 of each year detailing the uses by each municipality of funds received under G.S. 136-41.1 and G.S. 136-41.2 during the preceding year.

(b1) Failure to File. – A municipality that fails to file the statement required under subsection (b) of this section by October 1 is ineligible to receive funds allocated on October 1 under G.S. 136-41.1 or G.S. 136-41.2 for the fiscal year in which the municipality failed to file the statement. A municipality that fails to file the statement required under subsection (b) of this section by January 1 is ineligible to receive funds allocated under G.S. 136-41.1 or G.S. 136-41.2 for the fiscal year in which the municipality failed to file the statement.

(c) Excess Accumulation of Funds Prohibited. – No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Except as otherwise provided in this section, any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year. Notwithstanding the other provisions of this section, the Department shall

adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations if a municipality's allocations are so small that the sum of the past 10 allocations would not be sufficient to accomplish the purposes of this section.

(d) Contracts for Maintenance and Construction. – In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following

the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

(e) Permitted Offsets to Funding. – The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

(1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,

(2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,

(3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and

(4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808; 1993 (Reg. Sess., 1994), c. 690, s. 1.1; 2011-145, s. 28.10(d); 2013-183, s. 3.3; 2015-241, s. 29.17D(b); 2017-57, s. 34.17(a).)

§ 136-41.4. Municipal use of allocated funds; election.

(a) A municipality that qualifies for an allocation of funds pursuant to G.S. 136-41.1 shall have the following options:

(1) Accept all or a portion of funds allocated to the municipality for use as authorized by G.S. 136-41.3(a).

(2) Use some or all of its allocation to match federal funds administered by the Department for independent bicycle and pedestrian improvement projects within the municipality's limits, or within the area of any metropolitan planning organization or rural transportation planning organization.

(3) Elect to have some or all of the allocation reprogrammed for any Transportation Improvement Project currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural transportation planning organization.

(b) If a municipality chooses to have its allocation reprogrammed, the amount that may be reprogrammed is an amount equal to that amount necessary to complete one full

phase of the project selected by the municipality or an amount that, when added to the amount already programmed for the Transportation Improvement Project selected, would permit the completion of at least one full phase of the project. The restriction set forth in this subsection shall not apply to any bicycle or pedestrian projects. (2007-428, s. 5; 2013-183, s. 3.4.)

§ 136-41.5. Annual report on use of Bicycle and Pedestrian Planning Grant funds.

The Division of Bicycle and Pedestrian Transportation of the Department of Transportation shall submit an annual report by May 15 on the progress of projects identified in plans (i) submitted to the Division over the 10-year period prior to the report and (ii) funded from Bicycle and Pedestrian Planning Grant funds. The Division shall submit the report required by this section to the chairs of the House of Representatives Appropriations Committee on Transportation, the chairs of the Senate Appropriations Committee on the Department of Transportation, and the Fiscal Research Division of the General Assembly. (2017-57, s. 34.22.)

§ 136-42. Transferred to G.S. 136-42.2 by Session Laws 1971, c. 345, s. 2.

§ 136-42.1. Archaeological objects on highway right-of-way.

The Department of Transportation is authorized to expend highway funds for reconnaissance surveys, preliminary site examinations and salvage work necessary to retrieve and record data and the preservation of archaeological and paleontological objects of value which are located within the right-of-way acquired for highway construction. The Department of Natural and Cultural Resources shall be consulted when objects of scientific or historical significance might be anticipated or encountered in highway right-of-way and a determination made by that Department as to the national, State, or local importance of preserving any or all fossil relics, artifacts, monuments or buildings. The Department of Natural and Cultural Resources shall request advice from other agencies or institutions having special knowledge or skills that may not be available in the said Department for the determination of the presence of or for the evaluation and salvage of prehistoric archaeological or paleontological remains within the highway right-of-way. The Department of Transportation is authorized to contract with the Department of Natural and Cultural Resources and to provide funds necessary to perform reconnaissance surveys, preliminary site examination and salvage operation at those sites determined by the Department of Natural and Cultural Resources to be of sufficient importance to be preserved for the inspiration and benefit of the people of North Carolina. The Department of Natural and Cultural Resources is authorized to enter into contracts and to make arrangements to perform the necessary work pursuant to this section. The Department of Natural and Cultural Resources shall assume possession and responsibility for any and all historical objects and is authorized to enter into agreements with governmental units and agencies thereof, institutions, and charitable organizations for the preservation of any or all fossil relics, artifacts, monuments, or buildings. (1971, c. 345, s. 1; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1; 2015-241, s. 14.30(s).)

§ 136-42.2. Markers on highway; cooperation of Department of Transportation.

The Department of Transportation is hereby authorized to cooperate with the Department of Natural and Cultural Resources in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17; 1943, c. 237; 1957, c. 65, s. 11; 1971, c. 345, s. 2; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1; 2015-241, s. 14.30(s).)

§ 136-42.3. Historical marker program.

The Department of Transportation may spend up to sixty thousand dollars ($60,000) a year to purchase historical markers prepared and delivered to it by the Department of Natural and Cultural Resources. The Department of Transportation shall erect the markers on sites selected by the Department of Natural and Cultural Resources. This expenditure is hereby declared to be a valid expenditure of State highway maintenance funds. No provision in this section shall be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766; 1955, c. 543, s. 2; 1957, c. 65, s. 11; 1971, c. 345, s. 2; 1973, c. 476, s. 48; c. 507, s. 5; 1977, c. 464, s. 7.1; 1983 (Reg. Sess., 1984), c. 1034, s. 129; 2015-241, s. 14.30(s); 2016-94, s. 35.4.)

§ 136-43. Transferred to § 136-42.3 by Session Laws 1971, c. 345, s. 2.

§ 136-43.1. Procedure for correction and relocation of historical markers.

Any person, firm or corporation who has knowledge or information, supported by historical data, books, records, writings, or other evidence, that any historical marker has been erected at an erroneous or mistaken site, or that the inscription appearing on any historical marker contains erroneous or mistaken information, shall have the privilege of presenting such knowledge or information and supporting evidence to the advisory committee described in the preamble of Public Laws 1935, c. 197 for its consideration. Upon being informed that any person desires to present such information, the Secretary of Natural and Cultural Resources shall notify such person of the date, place and time of the next meeting of the advisory committee. Any person, firm or corporation desiring to present such information to the advisory committee shall be allowed to appear before the committee for that purpose.

If, after considering the information and evidence presented, the advisory committee should find that any historical marker has been erected on an erroneous or mistaken site, or that erroneous or mistaken information is contained in the inscription appearing on any historical marker, it shall so inform the Department of Natural and Cultural Resources and the Department of Natural and Cultural Resources shall cause such marker to be relocated at the correct site, or shall cause the erroneous or mistaken inscription to be corrected, or both as the case may be. (1961, c. 267; 1973, c. 476, s. 48; 2015-241, ss. 14.30(s), (t).)

§ 136-44. Maintenance of grounds.

The Department of Transportation is hereby authorized and directed through the highway supervisor of the district that includes Warren County to clean off and keep clean the premises and grounds at the old home of Nathaniel Macon, known as "Buck Springs," which are owned by the County of Warren, and also to look after the care and keeping the grounds surrounding the grave of Miss Anne Carter Lee, daughter of General Robert E. Lee, in Warren County.

The Department of Transportation is authorized and directed through the highway supervisor of the district that includes Pender County to maintain the grounds surrounding the grave of Governor Samuel Ashe in Pender County. (1939, c. 38; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 2001-487, s. 125.1.)